IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Ronald S. Kolessar
Appl. No.:	09/896,246
Conf. No.:	9192
Filed:	June 29, 2001
Title:	MEDIA DATA USE MEASUREMENT WITH REMOTE DECODING/PATTERN MATCHING
Art Unit:	2623
Examiner:	Harun M. Yimam
Docket No.:	339198-00052 (P0043A)

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

This request is submitted in response to the Final Office Action dated December 17, 2007. This request is filed contemporaneously with USPTO form PTO/SB/33, "Pre-Appeal Brief Request for Review" and form PTO/SB/31, "Notice of Appeal."

Remarks begin on page 2 of this paper.

REMARKS

Claims 1-142 are pending in this application. Claims 1, 22, 41, 48, 67, 74, 81, 88, 91, 94, 101, 104, 111 and 120 are independent claims in the present application.

Claims 1, 8-14, 21-22, 26, 30-34, 41, 48, 55-59, 66, 67, 74, 81, 85, 88, 91, 94, 101, 101, 104 and 108 were rejected under 35 U.S.C. §102(e) as being anticipated by *Lu et al.* (US Patent 6,647,548). Claims 2, 5-7, 15-20, 27-29, 35-40, 42-47, 49, 52-54, 60-65, 68-73, 75-80, 82, 86-87, 89, 90, 92, 93, 95, 99-100, 102, 103, 105 and 109-110 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Lu et al.* (US Patent 6,647,548). Claims 3-4, 24-25, 50-51, 83-84, 96-98, and 106-107 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With this Request, Appellant respectfully submits the rejections are improper and should be reversed.

Applicant maintains the arguments put forth in the Response dated August 23, 2007. One of the major points of contention in this examination is the manner in which "decoding" is executed in a media data use measurement system (see 08/23/07 Response, pages 30-32). In the Final Office Action, the Office posits that *Lu* discloses "at least two types of decoding [that] take place at the central office" (page 2, paragraph 2). The first decoding according to the Office involves the correlation of ancillary codes (FIG. 4, ref. 96) to a look-up table stored in a program library to establish program IDs associated with the ancillary codes (col. 13, lines 18-26; col. 11, line 61).

Applicant respectfully submits that this interpretation ignores the context of the formed data sets and ancillary codes that are ultimately "decoded" at a remote location in the present claims. For example, claim 1 recites "forming, *without processing the media data sufficiently to decode the ancillary codes*, a data set in the monitoring device" (see claims 22, 48, 81, 94, 104). Similarly, claim 41 recites "media data received at a user location . . . having ancillary codes in at least some of the media data, such media data *not having been processed to decode the ancillary codes*" (see also claims 41, 67, 74, 88, 91, 101, 111 and 120). Applying these features to the first interpretation of "decoding" in *Lu*, it becomes apparent that the interpretation cannot stand.

According to *Lu*, ancillary codes are inserted into media data by a broadcaster (col. 1, lines 61-66) and received at a user location/monitoring device, where the codes are "read" by a household ancillary code reader (52) (col. 8, lines 13-35; col. 11, lines 11-14). At the outset, Applicant asks: what, if not performing some form of "decoding", is the ancillary code reader doing when it is "reading" the ancillary codes? Applicant respectfully submits that the ancillary code reader is indeed performing the necessary "decoding" – this point was explicitly acknowledged in the Final Office Action (page 3, paragraph 5: "It is true that incoming video data is decoded by the television receiver at the subscriber site"; see also page 4, second paragraph: "ancillary data is extracted from the signal"). Applicant adds that, under *Lu*, the ancillary codes must be fully decoded, or else the user is required to manually enter channel/station information (col. 9, lines 19-27). At the central office (34), *Lu* discloses a form of "sanity processing" for determining which of the decoded ancillary codes are to be used in a correlation process aimed at producing an identification of media (col. 12, lines 42-54; col. 13, lines 15-38).

While the Final Office Action acknowledges at least some form of decoding at the user location (subscriber site), the Office Action goes further to state that decoding performed at the subscriber site "does not preclude a different decoding step taking place at the central office" (*Id.*). Thus, it appears to the Applicant that the Office Action is providing three distinct and different processes that have been selectively and improperly applied in an attempt to form a definition of "decoding" to match the presently claimed features. Specifically, the Office Action appears to view (1) decoding at the subscriber site, (2) sanity processing at the central site, and (3) the correlation process at the central site as disclosures of "decoding", despite the fact that each of these processes perform different functions. Under interpretation (1), the "decoding" clearly occurs at the subscriber site, where the ancillary code is fully decoded, which is expressly contrary to the present claims. Under (2), as was already conceded by the office, the ancillary codes are already decoded prior to undergoing sanity processing. Under (3), the ancillary codes are merely correlated to the program library to identify programs. Whether (2) and (3) are considered separate or collectively, each process is dependent upon the user site fully decoding the ancillary codes before forwarding them to the central site; if the codes are not decoded properly, the sanity processing at the central site will reject the codes outright (col. 12, lines 42-54).

The second interpretation of "decoding" put forward by the Office (now the fourth definition when read in light of the above) is based upon the mere transmission of data over a PSTN, as described in col. 7, lines 1-5 (see Final Office Action, pages 2-3, paragraph 4). According to the Office Action, it is "inherent" that that the claimed decoding takes place (see page 5, 1st full paragraph). Applicant concedes that modems, in and of themselves, modulate an analog carrier signal to encode digital information, and also demodulate such a carrier signal to decode the transmitted information. However, this is not what Applicant has claimed in the present application. As stated above, the claims require that the data sets are formed "without processing the media data sufficiently to decode the ancillary codes" and that "such media data not having been processed to decode the ancillary codes." The decoding in the present claims refers to the manner in which ancillary codes are decoded, and not how the overall transmission is sent to a remote location. Under the Office Action's second interpretation, the transmissions would not even be received at a remote location under *Lu* if they were formed without sufficient decoding in place at the modem.

For at least these reasons, Applicant submits the rejections under 35 U.S.C. §102 are improper and should be withdrawn. The numerous interpretations of "decoding" in the *Lu* reference are inconsistent with each other and cannot be reconciled with the claimed features in the present application.

Claims 2, 5-7, 15-20, 27-29, 35-40, 42-47, 49, 52-54, 60-65, 68-73, 75-80, 82, 86, 87, 89, 90, 92-93, 95, 99-100, 102-103, 105 and 109-110 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Lu* (US Patent 6,647,548). In light of the arguments provided above, Applicant respectfully submits the rejections are also improper and should be withdrawn.

In light of the above, Applicants respectfully submit that the presently pending claims are both novel and non-obvious over the art of record. Accordingly, Applicants respectfully If any fees are due in connection with this application as a whole, the office is hereby authorized to deduct said fees from Deposit Account No.: 501214.

Respectfully submitted,
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